

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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Armen
Addressee - Urban Mass Transportation Administration
Employees

FILE: B-200323

DATE: April 30, 1981

MATTER OF: Reimbursement of Excess Commutation Costs During New York Transit Strike

DIGEST: Employees of Urban Mass Transportation Administration are not eligible for reimbursement of excess cost of commuting by private or GSA rental car over normal public transit fares, despite complete public transit shutdown during April 1980 strike. Cost of transportation to place of business is personal responsibility of employee except in limited emergency circumstances not applicable here. B-158931, May 26, 1966, and 54 Comp. Gen. 1066 (1975) distinguished.

[During the 10-day New York City transit strike in April 1980, Federal employees who normally relied on public transit to commute to city offices were forced to find alternate means of transportation, often at a cost in excess of normal transit fares. After the strike, two employees of the Urban Mass Transportation Administration (UMTA) submitted vouchers requesting reimbursement for the excess cost of commuting via privately-owned vehicle, and another UMTA commuter submitted a voucher for the rental fees on a General Services Administration (GSA) vehicle, plus other associated costs. The certifying officer refused to certify the three vouchers, and the matter was subsequently referred to this Office for an advance decision.] We affirm the certifying officer's action in denying reimbursement.

The settled rule is that employees must bear the cost of transportation between their residences and official duty locations. 11 Comp. Gen. 417 (1932); 15 id. 342 (1935); B-189114, February 14, 1978. [The fact that emergency conditions necessitate additional trips or otherwise increase commuting costs does not alter the employee's responsibility.] 36 Comp. Gen. 450 (1956); B-189061, March 15, 1978. Similarly, [the unavailability of public transportation alone does not shift this personal obligation to the Government.] 19 Comp. Gen. 836 (1940); 27 id. 1 (1947); B-171969.42, January 9, 1976. These general rules clearly assign the responsibility for home-to-work transportation to the individual employee in nearly every circumstance. [We have made exceptions to the general rule only in emergency situations where even alternate transportation was unavailable or scarce and Government operations were closed down except for a few essential personnel who were ordered to report to work. However, none of those circumstances are applicable to the 1980 transit strike or the UMTA employees claiming reimbursement.]

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Most directly on point of our transit emergency cases is B-158931, May 26, 1966. This decision arose out of the 1966 New York transit strike. During that strike, all affected Federal employees were permitted to remain at home without charge to annual leave. An employee at the Internal Revenue Service's Manhattan office was nonetheless directed by his supervisor to report to work and to transport five co-workers in his privately-owned vehicle. 5 U.S.C. § 5704 provides that mileage is payable to employees using their privately-owned vehicles in the conduct of official business. We approved reimbursement of the employee's commuting costs in that case, analogizing the required conduct of a carpool transportation arrangement to the performance of official duties. We noted that had the group riding arrangement not been administratively directed, all six employees would have been authorized to remain at home without a charge to leave. Thus the Government benefitted by having essential work of the office carried out at minimal additional expense instead of saving the transportation expenses but losing the services of the six employees who had to be paid anyway.

Although we approved reimbursement to the employee in question, the case does not stand for the proposition that whenever a public transit strike occurs, Federal employees may be reimbursed for the excess cost of alternative transportation. Rather, we observed that the particular circumstances warranted a limited exception to our general rule.

There are none of these exceptional circumstances in the present case. According to the Federal Executive Board (FEB), a planning and coordinating group, Federal employees in the New York metropolitan area were under a "liberal leave" policy during the 1980 strike. [This meant that employees were asked to make every reasonable effort to come to work and that failure to report would have resulted in an involuntary charge to annual leave.] In other words, unlike the 1966 case, employees were under the usual obligation to report to work and no specific instructions to report were given or required.

Additionally, the file does not disclose that the carpool arrangements had official UMTA sponsorship or sanction. Although the FEB urged agencies to use prearranged private and GSA carpools to facilitate the presence of key employees, there is no indication that the claiming employees had been induced to believe they would be performing official duties while transporting themselves and colleagues to and from work. [Neither did the employees have any advance expectation of reimbursement] on the basis of the FEB statement. Thus, the limited exception created by B-158931, cited above, does not apply to the present case.

The employees requesting reimbursement have relied on 54 Comp. Gen. 1066 (1975). That case, too, dealt with a complete transit shut-down, but it is also distinguishable from the present situation. There, a San Francisco transit strike caused a high rate of absenteeism among employees of the Social Security Administration. A particularly high rate of absenteeism occurred among those employees responsible for processing approximately 15 percent of the national weekly total of Social Security checks. Continued absence of approximately 99 critically-needed employees would have impaired a vital Government function. To combat the situation and to facilitate the presence of essential personnel who would otherwise have chosen to remain at home during the strike, the Administration contracted for private bus service to transport employees to its offices. We agreed that the rental of buses was within the realm of administrative discretion which this Office has always acknowledged with regard to the use of Government-procured vehicles for home-to-work transportation in emergency situations. 31 U.S.C. § 638a(c)(2) (1976); 54 Comp. Gen. 855 (1975); 25 *id.* 844 (1946). Again, we stressed the overriding Government interest in continuing an essential Government service, the distribution of weekly payments to Social Security recipients dependent upon that money.

As to whether the "administrative discretion" theory could be applied to the situation of the UMTA carpooler in the GSA rental car, several important distinctions must be drawn. The interest of the Government in the presence of the five employees in the GSA vehicle carpool seems significantly less. While the record contains an assertion that they were "key personnel", there is no indication that they were engaged in continuing essential services, temporary cessation of which would have significantly affected public safety or welfare. An additional distinction exists in that the GSA car was rented by one of the carpooling employees rather than by UMTA. Although the rental was apparently approved by the employee's immediate supervisor, he lacked authority to obligate agency funds for this purpose. Further, there is no indication that the carpool members were designated by UMTA, as were the bus passengers in 54 Comp. Gen. 1066.

In sum, the unavailability of any particular mode of public transportation, even for an extended period of time, does not entitle a Federal employee to reimbursement of excess commuting costs resulting from use of an alternative, more expensive mode. Insofar as strikes by public transit employees are likely to occur with increasing frequency, Federal employees should be prepared to assume responsibility for finding as well as paying for alternate means of transportation. At the same time Federal offices in metropolitan areas should be flexible in planning for transit emergencies.

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In accordance with the foregoing, we affirm the certifying officer's action denying reimbursements to the claiming employees, and we will retain the original vouchers and supporting documentation in this Office.

Milton J. Fowler

Acting Comptroller General
of the United States